

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Petition of
Transit Services, Inc., 55 East
Fifth Street, #1340, St. Paul, MN
55101: Petition for Charter Permit
Authority to Transport Passengers.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDED ORDER

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge from the Office of Administrative Hearings, on March 8, 1995, in South St. Paul, Minnesota. A second day of hearing was held on March 15, 1995, also in South St. Paul at the Offices of the Minnesota Transportation Regulation Board.

Appearances: Jay Patrick Plunkett and Shawn R. McIntee, Moore, Costello & Hart, Attorneys at Law, 1400 Norwest Center, 55 East Fifth Street, St. Paul, Minnesota 55101, appeared on behalf of the Petitioner, Transit Services, Inc. (TSI or Petitioner); Andrew R. Clark, Kalina, Wills, Woods, Gisvold & Clark, Attorneys at Law, 941 Hillwind Road Northeast, Suite 200, Minneapolis, Minnesota 55432-5964, appeared on behalf of Protestants Lee Lines, Inc., Lorenz Bus Service, Inc., Minnesota Coaches, Raleigh Lines, Inc. and Voigt's Motorcoach Travel, Inc.; Daniel Holter, 1825 North Broadway, Rochester, Minnesota 55906, appeared on behalf of Protestant Rochester City Lines; and George C. Holter, 1825 North Broadway, Rochester, Minnesota 55906, appeared on behalf of Richfield Bus Company, Inc. Richfield Bus Company, Inc. also joined in the initial brief submitted by Andrew R. Clark on behalf of the other Protestants previously named.

The record of this proceeding closed on May 22, 1995, with the receipt by the Administrative Law Judge of the final supplemental brief of counsel.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed

exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Petitioner has established its fitness and ability to receive the proposed charter permit, whether the area to be served has a need for the service to be provided and, if so, whether the Protestants have demonstrated that existing service adequately meets any need established by the Petitioner.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

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1. On November 10, 1994, the Petitioner, Transit Services, Inc., filed with the Minnesota Transportation Regulation Board a Petition for Charter Carrier Permit Authority. The initial Petition sought charter carrier permit authority to transport passengers under charter between all points in Minnesota, restricted to trolley-car type vehicles.

2. Notice of the Petition was published in the Transportation Regulation Board's bulletin of November 18, 1994, setting December 8, 1994, as the final protest date.

3. Timely protests were filed by Brainerd Bus Lines, Inc., Lee Line Corp., Lorenz Bus Service, Inc., Minnesota Coaches, Inc., Raleigh Lines, Inc., Voigt's Motorcoach Travel, Inc., Rochester City Lines, Inc., and Richfield Bus Company, Inc.

4. Notice of hearing regarding the Petition was published in the Transportation Regulation Board bulletin of January 20, 1995, establishing a hearing date of February 21, 1995. The Notice of Hearing was published in successive editions of the Board's weekly calendar until the date of the hearing.

5. By agreement of the parties, the hearing initially scheduled to be held on February 21, 1995, was rescheduled to be held on March 8, 1995.

6. At the hearing, the Protests of all the Protestants stated in Finding 3, supra, were received and each entity was made a party to the proceedings as an Intervenor.

7. At the hearing herein, the Applicant proposed that the territorial scope of the Petition be restricted as follows: Petition for charter carrier permit authority to transport passengers under charter with origin and destination points within a 12-mile radius from the Ramsey County Courthouse on West Kellogg Boulevard in St. Paul, Minnesota. The Administrative Law Judge accepted the restriction on the authority sought as reasonable.

8. Based on the territorial restriction on the scope of the charter carrier permit authority sought, Brainerd Bus Lines and Rochester City Lines, Inc. withdrew their Protests conditioned on the Board's acceptance of the restrictive amendment proposed by the Petitioner and accepted by the Administrative Law Judge.

9. Capital City Trolley, Inc. (CCT or Capital City) is a non-profit corporation which has applied for charitable and exempt status under section 501C (3) of the Internal Revenue Code. The corporation was established in 1993 to implement a proposal that trolley-car type equipment be operated in the City of St. Paul both within the "cultural corridor" and the rest of the St. Paul downtown area.

10. In 1991, a transportation consultant opined that it would be of benefit to the St. Paul cultural corridor and the downtown area of the City of St. Paul, itself, if trolley-type equipment provided a distinct shuttle transportation service throughout the downtown area. The members of a civic task force applied to the Regional Transit Board, which was absorbed by the Metropolitan Council, effective October 1, 1994, for funds to obtain trolley-car type equipment to provide a regular route transportation shuttle service in the St. Paul downtown area.

11. In 1994, the Metropolitan Council issued general obligation bonds under Minn. Stat. § 473.39 (1994). That statute allows the Metropolitan Council to issue general obligation bonds "to implement the Council's transit capital improvement program". A portion of that bond issue was given to CCT for the purchase of trolley-car type equipment. The payment from the Metropolitan Council to CCT for the purchase of equipment was a grant. CCT has no obligation to repay approximately \$350,000 which

was used to purchase and outfit the four trolley-car type vehicles shown in Ex. 4, A, B, C, and D.

12. CCT also receives an operating subsidy of public funds from the City of St. Paul in the amount of \$125,000 annually for a two-year period.

13. CCT owns the four trolley-car type vehicles shown in Ex. 4, A, B, C, and D. CCT does not itself have assets other than the four trolley-car type vehicles. It contracts out for the provision of any service it needs. The successful bidder is then compensated for their services or products from public funds received by the corporation, including CCTs operating subsidy from the City of St. Paul.

14. In June of 1994, CCT sent out a request for proposals to bus companies to operate the four trolley-car type vehicles within the downtown area of the City of St. Paul on regular routes as indicated in Exhibit A attached to the request for proposal. The request for proposal was sent to the bus operators shown on Exhibit 6. Protestants Minnesota Coaches, Lorenz and Lee Lines, among others, received the request for proposal. The request for proposal was not sent to Raleigh Lines, which had extensive experience in the operation of trolley-car type vehicles within the City of Stillwater, and whose president and chief operating officer had expressed to the City an interest in operating any trolley-car type vehicles publicly owned and operating within the City of St. Paul.

15. The request for proposal shown in Exhibit 5 was also sent to Mr. Douglas Hoskin, a person who operates parking facilities within the City of St. Paul. Mr. Hoskin had been a member of the transportation task force and had worked with the CCT on the trolley concept.

16. The requests for proposal did not specifically require bids on providing trolley services on a charter basis.

17. Mr. Douglas Hoskin was selected by CCT to operate the regular route and shuttle service using the equipment owned by CCT and purchased with funds supplied by the Metropolitan Council. Mr. Hoskin was selected primarily because he was a St. Paul entrepreneur and he had worked in the past with the task force and CCT.

18. Mr. Hoskin incorporated Transit Services, Inc., a for-profit corporation, on November 3, 1994. Ex. 9. Transit Services, Inc. is owned entirely by Douglas Hoskin

and his wife. Mr. Hoskin's primary business is the ownership of parking facilities in St. Paul. An employee of Mr. Hoskin, currently working with his parking interests, Mia Saldaneri, has a "phantom" stock ownership interest. Mr. and Mrs. Hoskin's parking facilities in St. Paul are owned by Parking Services, Inc., a profitable Minnesota corporation, whose stock is held entirely by the couple.

19. As a "startup" corporation, TSI has extremely limited current assets. The Petition filed by Transit Services, Inc. shows assets of \$1,500.00. Mr. Hoskin, himself, however, has a net worth exceeding \$1 million. At the hearing, he stated that he would commit to TSI from his personal and business assets the funds that might be required for it to function.

20. Mr. Hoskin, the president of Parking Services, Inc., has experience, while in other employment, of operating an airport shuttle program, moving persons from remote parking facilities to airports. Also, as a consequence of Mr. Hoskin's involvement with parking in the St. Paul area, both he and Ms. Saldaneri are regularly called upon to comply with statutes and rules of governing authorities. Further, Mr. Hoskin and Ms. Saldaneri will seek and implement legal advice in complying with all applicable Minnesota laws and rules relating to charter carriage.

21. In January of 1995, Capital City Trolley, Inc. and Transit Services, Inc. jointly executed an operating agreement, a copy of which is contained in Exhibit 8. The term of the agreement is from November 15, 1994 to May 1, 1997. The agreement may also be cancelled by either party on 30 days' notice in the event of default by the other party, after a 30-day period to cure the default. The operating agreement applies to both the regular route service and the charter service contemplated by the parties.

22. TSI is responsible under the operating agreement for operating and scheduling trolleys and personnel, maintaining trolleys, developing administrative procedures, and compiling performance statistics and financial reports. TSI has sole responsibility for administration and management of the charter services to be provided. All of the operating records for the charter services, as well as the regular route services, are to be maintained by TSI. TSI has the responsibility for the operation and maintenance of the four trolleys available under the operating agreement. With respect to compensation received for charter services, TSI receives from CCT a charter service fee of \$32.50 for charter operations for each hour or portion thereof that a vehicle provides such service. TSI must collect and remit to CCT \$75.00 per hour for charter service with a three-hour minimum charter. The \$75.00 per hour fee is to be paid by the charter customer.

23. The operating agreement between CCT and TSI is the only written agreement that exists between the parties. There is no lease of equipment from CCT to Transit Services and the title and ownership of the four trolley-car type vehicles will remain at all times in CCT.

24. The operating agreement also provides that Transit Services, as operator, will provide for the operation and maintenance of the trolleys including fuel, repairs, storage and other costs. Transit Services must also provide all personnel to operate the trolley-car type vehicles, provide all administration and accounting for the transit operation, provide insurance and licensing and pay taxes.

25. It is anticipated that the four trolley-car type vehicles will be primarily used in the regular route service to be provided. The equipment will be available to provide charter service only about ten percent of the operating hours of the vehicles. It is also anticipated that the charter usage of the trolleys will provide a valuable advertising service for the regular route trolley service that is contemplated.

26. The feasibility or viability of the regular route service for trolley-car type vehicles in the City of St. Paul does not depend on a grant of charter carrier authority. Except for possible good will and advertising created in the public mind by the sight of trolley-car type vehicles operating in charter service, the two transportation functions are entirely independent.

27. The Convention and Visitors Bureau of the City of St. Paul has, in the past, desired to use trolley-car type equipment for special activities. The Taste of Minnesota, semi-annual art crawls and openings of various public events and activities would benefit from the availability of trolley-car type equipment. There is no evidence in the record, however, that the use of trolley-car type equipment for such activities as Taste of Minnesota or art crawls would not occur in regular route as opposed to charter service.

28. In 1995, the Governor's Inaugural Committee sought trolley-car type equipment for use at activities during the week of the Governor's Inauguration. The person on the Governor's staff responsible for making event arrangements met with TSI, who provided the vehicles required. The Governor's Inaugural Committee selected TSI because it was headquartered in St. Paul, where the inauguration was to take place. The person who selected TSI to provide the service was told by TSI that they had all requisite operating authority, even though a permit to provide charter service had not been secured prior to providing service. The Governor's Inaugural Committee did not seek out any other provider of trolley-car type vehicles in the St. Paul area, other than TSI.

29. Since 1993 when trolley-type vehicles were used to promote downtown Christmas merchandising, the St. Paul Tourism and Marketing Bureau has received some inquiries about the availability of trolley-car type service from hotels, persons planning wedding receptions, and from persons involved in civic festivities such as Rondo Days, Grand Avenue Days, and Cinco de Mayo. When such requests were received, they were referred to Richfield Bus and to Raleigh Lines, Inc.

30. CCT has not filed a petition for charter service and it did not participate as a party to this proceeding.

31. Lee Lines, Inc. has charter carrier authority to provide service within a 50-mile radius of the City of Red Wing. As such, its territorial authority conflicts with that sought by the Petitioner. Lee Lines operates 27 motorcoaches and six school buses in charter carriage. Lee Lines does not operate trolley-car type vehicles. Lee Lines objects primarily to competing with a company that is not charged for its capital equipment and who can rely directly or indirectly on public funds for some of its expenses.

32. Minnesota Coaches holds charter carrier permit authority to provide charter service from an origin point within a 25-mile radius of the City of Maplewood to all points in Minnesota. As such, its operating authority conflicts with that sought by the Petitioner. Minnesota Coaches does not operate trolley-car type equipment and has never provided trolley service. It does, however, operate small motorcoach equipment that carries roughly the same number of passengers as trolley-car type vehicles. Minnesota Coaches objects to competing with a charter carrier that relies on public monies for its capital equipment.

33. Lorenz Bus Company has as its main charter market the City of St. Paul. Lorenz operates school buses, motorcoaches, minibuses and small vans in its charter operations. Lorenz does not have trolley-car type equipment. Lorenz Bus Company was not made aware of the request of CCT for an operator to provide service in trolley-car type equipment. Lorenz would be interested in operating the trolley-car type equipment owned by CCT in regular route or charter operations within the City of St. Paul.

34. Raleigh Lines, Inc. operates the "Rolley Trolley" in Stillwater, Minnesota. It has charter carrier authority to provide charter trolley-car type service throughout Ramsey County. Ex. 22. Raleigh Lines, Inc. currently operates one trolley and has an additional trolley-car type vehicle on order. Ex. 17A, B, C and D. Raleigh Lines, Inc.

trolleys are capable of operating throughout the year, including the winter. The vehicles are available every weekend and during the week. Raleigh Lines, Inc. is a member of the St. Paul Convention and Visitors Bureau and it also markets its service through yellow page advertising and the direct placement of brochures in hotels, bars and restaurants. Raleigh Lines, Inc.'s service was known to the St. Paul Convention and Visitors Bureau, to Mr. Hoskin and to CCT in early 1994. When the request for proposal contained in Exhibit 5 was sent out, however, Raleigh Lines, Inc. did not receive it, even though the Company had participated with the St. Paul Convention and Visitor Bureau in earlier trolley projects.

35. Richfield Bus Company, a charter carrier with geographic operating authority which conflicts with the Petition had, in the past, operated four trolley-car type vehicles. It reduced its available trolley-car type vehicles to two vehicles because of a lack of demand. It currently has on order two new trolley-car type vehicles for use in competition with the trolley-car type service being offered in the City of Minneapolis under partial government subsidy. Richfield Bus Company does not believe it appropriate to force a private provider of transportation service to compete with a government supported transportation service.

36. Minn. Stat. c. 221 (1994), no longer grants automatic incidental charter authority to a regular route provider of passenger service.

37. No provision of Minn. Stat. c. 473 (1994) either specifically authorizes or prohibits the incidental use of vehicles purchased with public funds in charter service.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. The Petitioner has not demonstrated its fitness and ability within the meaning of Minn. Rule 7800.0100, subp. 4 (1993).

4. It is not within the discretion of the Transportation Regulation Board to grant permit authority to a corporation that has not applied for such authority or who has not participated as a party in the contested case proceeding in which such authority is sought.

5. The vehicles to be used in the charter operation, being properly maintained, meet the safety standards of the Department of Transportation.

6. The Petitioner has failed to demonstrate that the area to be served has a need for additional charter carrier service provided in trolley-car type equipment.

7. If such a need had been demonstrated, the Protestants can adequately meet any such need.

8. Any Finding of Fact more properly termed a Conclusion, and any Conclusion more properly termed a Finding of Fact is hereby expressly adopted as such.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based on the foregoing Conclusions, it is the recommendation of the Administrative Law Judge to the Transportation Regulation Board that it issue the following:

ORDER

The Petition of Transit Services, Inc., as amended, to provide charter carrier service limited to origin and destination points within a 12-mile radius of the Ramsey

County Courthouse on West Kellogg Boulevard in St. Paul, Minnesota, in trolley-car type vehicles is, in all respects, DENIED.

Dated this 14th of June, 1995.

BRUCE D. CAMPBELL
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail.

Reported: Tape Recorded; No Transcript Prepared.

MEMORANDUM

Minn. Stat. § 221.121 (1994), governs the issuance of a charter carrier permit. As part of the Petitioner's burden of proof, it must establish that it is "fit and able" to conduct the proposed operations, that its vehicles meet the safety standards established by the Department of Transportation, and that the area to be served in the Petition has a need for the transportation services requested in the Petition. If the Petitioner demonstrates the initial three statutory requirements, the burden then shifts to existing carriers that oppose the issuance of the permit to prove that they can fully and adequately meet the need for transportation services demonstrated. Five Star Trucking, Inc. v. Minnesota Transportation Regulation Board, 370 N.W.2d 666, 671-72 (Minn. App. 1985); Appeal of Signal Delivery Services, Inc., 288 N.W.2d 707, 712 (Minn. 1980).

Minn. Rule pt. 7800.0100, subd. 4 (1993), defines the term "fit and able" to mean that the applicant is financially able to conduct the proposed business, the applicant's equipment is adequately and properly maintained, the applicant is competent, qualified and has the experience necessary to conduct the proposed business, and the applicant is mentally and physically able to comply with the rules and statutes that apply to the provision of transportation service in the State of Minnesota.

The Protestants initially argue that the Petitioner has not demonstrated its financial ability to conduct the proposed operations because of its current minimal assets. Because the Petitioner is a "startup" corporation, it would make little sense for Mr. Hoskin to infuse into the corporation significant assets before operating authority is obtained. Mr. Hoskin, the primary owner of TSI, has a financial net worth in excess of \$1 million. He testified at the hearing that he was ready and willing to commit to TSI the assets and resources necessary for conducting the proposed operations. The

Administrative Law Judge concludes that the Petitioner is financially able to conduct the proposed business. It is also apparent that the four trolley-car type vehicles that are to be used in the proposed operations are in safe operating condition and will be properly maintained.

The Administrative Law Judge concludes that the Petitioner has not demonstrated its fitness and ability because its use of the CCT equipment would be in clear violation of the Board's leasing rules contained in Minn. Rules pt. 7800.2500 - 7800.2700 (1993). The violations of the Board's leasing rules include the lack of exclusive use, possession and control of the equipment in TSI. There is no stated compensation for use of the equipment since TSI has free use of the publicly funded buses. Minn. Rule pt. 7800.2700 (1993) also provides that the lessee must receive payment for the equipment "and the lessor shall exercise no control or dominion over such revenues." The relationship between the parties stated in the operating agreement violates the leasing rules, since Transit Services must remit all funds collected to Capital City Trolley and Capital City will then pay to TSI \$32.50 per vehicle per hour that the vehicle is used in providing charter service. Ex. 8.

TSI argues that any violation of the Board's rules can simply be remedied by granting the authority, either jointly or solely, to CCT. TSI, however, provides no legal analysis of the Board's ability to grant authority to a non-applicant or to a non-party to the proceeding. It should be obvious that the Board has no jurisdiction over CCT. CCT has not filed any request for authority. There is no evidence in the record that counsel for TSI has the ability to speak for CCT or to bind it in any respect. Moreover, CCT did not participate as a party to the contested case proceeding. It is not the responsibility of the Administrative Law Judge or the Board to determine who should apply for permit authority or who would have been an appropriate party to a contested case proceeding. That responsibility is the responsibility of the Petitioner and/or the participants in the contested case proceeding who, in this case, were represented by experienced counsel. Therefore, the Administrative Law Judge must reject the curative suggestion of TSI that any legal deficiencies in its business relationship with CCT under the Board's rules may be remedied by granting authority to a non-applicant and non-party to the contested case proceeding.

In the past, the Board has also considered the financial feasibility of the proposed transportation service in determining whether a grant of a permit is appropriate. TSI, under the operating agreement, will only receive \$32.50 for each hour of charter service provided. This cannot be considered even a "break-even" service when other carriers receive \$75-\$100 per hour for providing such service. The charter service proposed by TSI serves only a loss-leader advertising function for the regular route service. This uneconomic service is possible only because the equipment was purchased from public funds received by CCT.

It is also suggested by the Protestants that TSI is not fit and able within the meaning of the statute because it has the free use of transportation vehicles obtained with public funds. The Protestants argue that the business relationship between TSI

and CCT violates Minn. Stat. c. 473 (1994), which relates to the Metropolitan Council and, arguably, its ability to provide public funds to be used for charter service in competition with private carriers.

There is no specific provision in Minn. Stat. c. 473 (1994), which prohibits or authorizes the use of monies supplied by the Metropolitan Council for providing charter carriage in competition with private carriers as exists at the federal level. 49 U.S.C. App. § 1602(f) provides that no federal financial assistance may be provided for the purchase or operation of buses unless the public body or publicly-owned operation receiving such assistance enters into an agreement with the United States Secretary of Transportation that the public body or publicly-owned operator will not engage in charter bus operations outside the urban area in which it provides regularly scheduled mass transportation services. That statute has no application to this proceeding since no federal funds or federal subsidy is involved.

A fair reading of Minn. Stat. c. 473 (1994), leads to the conclusion that the chapter does not deal specifically with the secondary or incidental use of transportation equipment purchased with public funds. Although specifically invited to do so after a citation by the Administrative Law Judge to the relevant statutory provisions, neither party was able to demonstrate convincingly that the law either allows or prohibits the incidental use in charter carriage of buses purchased with public funds. The Administrative Law Judge does note, however, that the 1994 Capital Funding Contract between Capital City Trolley, Inc. and the Regional Transit Board, the predecessor of the Metropolitan Council in providing public funding, only provides that the vehicles supplied be “used primarily in the operation of the downtown bus circulator service”. 1994 Capital Funding Contract, Contract No. 94/21/06-11, p. 1. Since Minn. Stat. c. 473 (1994) does not deal specifically with the incidental use of publicly purchased transportation equipment and it appears that the incidental use of such equipment in non-regular route service was anticipated by the Regional Transit Board, the Administrative Law Judge believes it inappropriate for the Board to bottom a denial of the permit on a restrictive construction of Minn. Stat. c. 473 (1994). It is clear that the only charter use of the publicly funded equipment will be limited, consisting of no more than ten percent of the available usage of each vehicle. The Administrative Law Judge would reach a different result if vehicles to be used in charter carriage were purchased with public funds and were to be used primarily or exclusively to provide such service.

The Administrative Law Judge also believes that it is unnecessary for the Board to interpret Minn. Stat. c. 473 (1994), as regards incidental charter usage of publicly purchased transportation equipment when the Petitioner in this case has not demonstrated need for the grant of a permit and the existing carriers have demonstrated an ability to meet the existing need. As with constitutional questions, it is appropriate to defer difficult questions of statutory construction to an occasion when such a decision is clearly necessary. This is not such a case.

In addition to fitness and ability, the Petitioner must demonstrate a need for additional charter carrier service in the proposed territory. In this case, virtually no

specific testimony regarding need was presented. Some of the testimony that was presented related to past illegal activity when TSI provided service without permit authority. TSI may not rely upon illegal service provided to establish need. The record does contain some general testimony from members of civic organizations about contacts they had received regarding the availability of trolley-car type vehicles. Again, the testimony is not specific with respect to requesting parties, frequency, or extent. The Administrative Law Judge, therefore, concludes that TSI has not demonstrated a cognizable need for additional charter trolley service within the area of the amended Petition.

Assuming, arguendo, that the Petitioner had established some need, the Administrative Law Judge believes that the Protestants, specifically Richfield Bus and Raleigh, have demonstrated that they can meet the need. Both Richfield and Raleigh operate trolley-car type equipment and are expanding their fleet of vehicles. Raleigh has worked with the St. Paul civic authorities and provided trolley-car type service in St. Paul when it was actually needed. Its fleet of vehicles is also expanding. Richfield is doubling the number of trolley-car type vehicles it has in its fleet. Except for a stated desire to use a St. Paul company, there is no demonstration in the record that TSI could offer some service that Protestants Richfield and Raleigh would not be equally able to provide. Under such circumstances, a denial of the Petition is appropriate.

BDC